

PLANNING COMMISSION
County of Kaua‘i State of Hawai‘i

ADMINISTRATIVE RULES PERTAINING TO
THE INTERPRETATION AND ENFORCEMENT OF KAUAI COUNTY CODE CHAPTER 8,
ARTICLE 17 RELATING TO TRANSIENT VACATION RENTALS

AUTHORITY:

Pursuant to Article XIV Section 14.03.E of the Kauai County Charter, the Planning Commission of the County of Kaua‘i adopts the following administrative rules pertaining to the responsibility of the Planning Department to enforce Chapter 8, Article 17 of the Kauai County Code 1987, as amended, (“KCC”) concerning to the certification and enforcement of Transient Vacation Rentals.

Pursuant to KCC Section 8-17.12(h), the annual renewal of a non-conforming use certificate is required~~[s as prescribed in]~~ in accordance with KCC Sections 8-17-10(a-h). The renewal documentation requires at a minimum:

...proof that there is a currently valid State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use. Failure to meet this condition will result in the automatic denial of the application for renewal of the nonconforming use certificates.

Non-conforming uses are defined under KCC Section 8-13.2, and specifically Section 8-13.2(b), which states as follows:

If any nonconforming use ceases for any reason for a continuous period of twelve (12) calendar months or for one (1) season if the use be seasonal, then the use shall not be resumed and any use of the land or building thereafter shall be in full conformity of the provisions of this chapter.

FINDINGS:

The ~~[requirements of the]~~ purpose of these rules is to clarify the Planning Department’s responsibilities in implementing Chapter 8, Article 17 of the KCC. ~~[lack specificity pertaining to the annual renewal process, including late filing.]~~ In particular, the rules clarify the documentation and evidence required to maintain a non-conforming use as defined in KCC Section 8-13, and the procedures necessary for a certificate holder to seek due process in the event of non-renewal.

RULE:

1. **NON-CONFORMING USE CERTIFICATE (NCUC) RENEWAL**

- A. **Requirements for Renewal.** Applications for renewal shall ~~[only]~~ be accepted by the Planning Department sixty (60) no earlier than days prior to the ~~[certificate’s renewal]~~ NCUC’s expiration date. The annual renewal deadline is ~~[the same month and day]~~

on the same day and month of the original determination made by the Planning Department[certifying], which certified the non-conforming use. Along with the mandatory renewal form, the following documents must accompany the submittal, pursuant to KCC 8-17.12(h)(1):

1. ~~[R]~~The renewal fee in the amount set forth by ordinance;
2. ~~[C]~~A copy of a current[ly] and valid General Excise Tax (GET) certificate; and
3. ~~[C]~~A copy of a current[ly] and valid Transient Accommodation Tax (TAT) certificate.

Further, in order to comply with KCC Section 8-17.8(b) and ascertain continuous use pursuant to KCC Section 8-[2]13.2(b), the following shall also be submitted to the Planning Department:

A dated, updated copy of the “For Your Safety and Comfort” information document provided to vacation rental tenants;

1. A copy of all print and internet advertising that includes the NCUC certificate number or registration number, and an on-island 24/7 contact name and phone number.
- ~~[4.]~~2. A dated, updated copy of the “For Your Safety and Comfort” information document provided to vacation rental tenants;
- ~~[2.]~~3. A dated picture of the required transient vacation rental sign with the house in viewing range; and
- ~~[3.]~~4. [Copies of redacted] A copy or copies of annual tax return[s] and reconciliation report for the previous year that [evidencing activity on] evidences payment of the GET and TAT [certificates with the address of the vacation rental clearly visible] taxes.

~~For the period of one (1) year from the date of approval of these Rules, the following shall also be required of renewing certificate holders:~~

~~Where the Planning Department has identified missing documents required by the non-conforming use certificate application process, the applicant, in good faith, shall exercise best efforts in providing these documents to complete the file as part of the renewal application.~~

~~**B. Timely Renewal Notices.** The Planning Department shall notify the certificate holder if the renewal application has been approved, approved pending a certain action, withheld, or denied within forty-five (45) days of the certificate’s renewal deadline.~~

~~**C. Inspections.** The Planning Department may require an inspection to verify the non-conforming use.~~

~~[D.]~~**B. Renewal Applications.** [Submittal] It is the certificate holder’s responsibility to submit applications to renew the NCUC by the [renewal date is the certificate holder’s responsibility as] NCUC’s expiration date. [t]The Planning Department shall not be responsible for notifying the holder of any pertinent deadlines. [Renewals postmarked by the deadline and received within seven (7) days after the deadline shall be accepted by the Planning Department as submitted timely.]

[F.]C. Late Renewal Applications. ~~[Renewal applications received by the Planning Department within thirty days (30) after the deadline may renew, provided that in addition to the renewal fee, a certificate holder shall pay an administrative processing fee of twice the renewal fee.] Failure to submit an application to renew the NCUC by the NCUC's expiration date will result in the automatic denial of the application. The Planning Department shall not accept applications submitted after the expiration date.~~

E. ~~Non-Compliance Timeline.~~ ~~After the thirtieth (30th) day after the renewal deadline, the Department shall reject any renewal application and issue a forfeiture letter.~~

D. Inspections. Once an application is accepted, the Planning Department may require an inspection to verify the non-conforming use and compliance with the Comprehensive Zoning Ordinance and other pertinent land use laws. The Planning Department may withhold approval of a renewal application and issue cease and desist notices to the applicant until all violations have been resolved to the satisfaction of the Planning Director.

E Renewal Notices. The Planning Department shall notify the certificate holder if the renewal application has been approved, approved pending a certain action, withheld, or denied within forty-five (45) days of the certificate's renewal deadline.

F. ~~[Forfeiture.] Appeal.~~ Determination [of forfeiture shall be subject to an appeal of the Planning Director's Decision pursuant to] that the renewal application has been approved, approved pending a certain action, withheld, or denied may be appealed pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission.

G. Voluntary Forfeiture. A certificate holder may voluntarily forfeit the ~~[non-conforming use certificate]~~ NCUC provided an declaration attesting to the voluntary action is submitted contemporaneously with a form provided by the Planning Department.

2. VIOLATIONS

A. Transient Vacation Rentals with NCUC and Violations. Pursuant to KCC Section 8-17.12(h)(2), the Planning Department may withhold the renewal of a NCUC if a violation of the Comprehensive Zoning Ordinance (CZO) or other pertinent land use laws are identified on the property. A temporary cease and desist order shall be issued to the certificate holder to immediately suspend vacation rental activities until the violation has been rectified. Should the vacation rental use continue in violation of the temporary cease and desist order, and the order has not been appealed pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission, fines shall be applicable as a non-allowed use outside the Visitor Destination Area.

1. CZO Violations. For lots with active transient vacation rental NCUCs, the Planning Department shall keep a record of any complaints and violations on the property. Along with a withhold notice, any violations shall require the issuance of a temporary cease and desist order to the certificate holder within ten (10) days

from submittal of the renewal form. The letter shall clearly state that any vacation rental use must cease until the violation is rectified or if the order is appealed. Failure to rectify the violation within one (1) year of the temporary cease and desist order shall be considered abandonment pursuant to KCC Section 8-23.2(b). Fines for the actual CZO violations leading to certificate withholding shall be issued as a separate order and separately appealable.

2. **Violations of other Pertinent Land Use Laws.** For lots with active transient vacation rental NCUCs, the Planning Department shall notify other County agencies of the nonconforming use with instructions to carbon copy any violation notices of their relevant codes to the Planning Department. The Department shall catalog these violation notices. At the time of renewal, should a cataloged violation notice be present and active in the file, the Planning Department shall issue a temporary cease and desist order along with information the certificate holder that the a future renewal will be withheld pending resolution of any violations. The letter shall clearly state that any vacation rental use must cease until the violation is rectified and the order is appealable. Failure to rectify the violation within one (1) year of the temporary cease and desist order shall be considered abandonment pursuant to KCC Section 8-23.2(b). A letter from the County agency that the violation has been rectified must be submitted to the Planning Department to release the hold on the renewal.

B. Single-Family Transient Vacation Rentals Operating Without Certificate. A Zoning Compliance notice shall be issued on a lot where an inspection has ascertained a Single-Family Transient Vacation Rental use. An after-the-fact NCUC shall not be issued by the Planning Department, the final appealable decision of the Director shall be upon the second notice, should the use persist, whereby the Director has levied a fine.

3. **ENFORCEMENT.**

- A. **Zoning Compliance Notice.** A Zoning Compliance Notice related to Single-Family use shall require a response from the person notified within ten (10) days of service. A withholding of the renewal and temporary cease and desist order shall be treated as a Zoning Compliance Notice.
- B. **Notice of Violation.** Should no response be received after service of a Zoning Compliance Notice, or the Planning Director finds lack of progress to timely rectify the violation the Planning Department shall issue a Notice of Violation. The Notice of Violation shall include a levy of fines, which may be appealed pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission.

4. FINE SCHEDULE

Fines shall be levied in addition to any permitting fees required to rectify the violation.

| TVR NCUC FINE SCHEDULE | | |
|------------------------------------|------------------------------------|-------------------------------------|
| Type | Example | Fine per instance or per day |
| STRUCTURE VIOLATIONS | | |
| Class I or II required | Lawn Building/Unpermitted addition | Starting at \$ 250 500 |
| Class III required | Unpermitted Construction | Starting at \$500 |
| Class IV required | Unpermitted Construction | Starting at \$2,500 |
| Use Permit/Variance required | Building height violation | Starting at \$5,000 |
| Not allowed in the zoning district | Illegal Density | \$10,000 |
| USE VIOLATIONS | | |
| Use Permit/Variance required | Baseyard in Res District | Starting at \$5000 |
| Not allowed in the zoning district | TVR w/o NCUC | \$10,000 |
| OTHER VIOLATIONS | | |
| Non-Compliance with Ordinance | No NCUC Sign | Starting at \$ 250 1,000 |
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